as inflicts a sentence of two months simple imprisonment must be set aside.

I wish to make it clear the the mere allegation that the books have been entrusted to a manager or other person who cannot be found or who has lost or destroyed them will not alone be sufficient to compel a Judge to pass a nominal sentence. He should further be satisfied that he can believe the statements made by the bankrupt, and that the bankrupt is not in any way responsible for the conduct of the person to whom the books have been entrusted. There may be other matters which will influence the decision, and no attempt has been made to deal exhaustively with the subject in this judgment. In conclusion I wish to say that I hesitate to criticise a practice which I understand has been long followed in the Colony. I would, however, suggest that in charges under section 114 and also in other bankruptcy matters it would be advisable to require oral evidence as to matters deposed to in affidavits.

GERAHTY, J.—I have had the advantage of reading the judgment of the learned Chief Justice with which I am in entire agreement. The only comment I would make on the matters in issue is that in applications or motions of a quasi-criminal nature, such as the motion in question, brought at the instance of the Official Assignee, strict regard should be had, in my opinion, to the fundamental principles of justice which operate for the protection of an accused person in a Court of criminal jurisdiction. In my view, while the averred object of the motion in question was to seek punishment of the appellant for his non-compliance with the peremptory provisions of Section 114 (b) of Ordinance No. 44 (Bankruptcy), the general and serious nature of the implications contained in the affidavit in support have not unnaturally influenced the Court to have regard to, and to mete out punishment to the appellant for delinqueneies entirely unconnected with the specific charge for which he was brought before the Court. That the appellant put up an answer to the specific charge which was not only *prima facie* reasonable, but which was also uncontroverted, is clear from the record. For what then one may ask was the appellant punished?

The answer can only be for matters with which he was not charged and which should not have been presented to the Court.

I agree that this appeal should be allowed and that the order of the Court below should be set aside.

Page (Counsel for the successful Appellant) then applied for costs against the Official Assignee but the Court declined to make any order as to costs. The Court held that inasmuch as the bankrupt had failed to comply with the requirements of section 114 (b) he had *prima facie* rendered himself liable to be committed to prison. It then became the duty of the Official Assignee to bring the matter to the notice of a Judge sitting in bankruptcy in order that the Judge might consider whether, in the circumstances, the bankrupt should be ordered to undergo imprisonment. The Court of Appeal had found that the learned Judge in the Court below had, in committing the bankrupt to prison, incorrectly exercised the discretion vested in him, but that finding did not in any way affect the position of the Official Assignee whose action in bringing the matter to the notice of the Judge was, in the view of the Court of Appeal, perfectly correct.

Solicitors for the Appellant (the Bankrupt) —*Allen & Gledhill.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

September 15, 1933.

M. E. T. K. R. A. R. K. R. ARUNASALAM CHETTIAR

v.

MOHAMED ABDUL LATHEEF MARICAR AND ANOTHER.

[SINGAPORE CIVIL SUIT No. 593 of 1933]

Practice—Amendment of Judgment.

A Judgment against an executor personally can in a proper case be amended to the ordinary form of Judgment *de bonis testatoris et si non de bonis propriis* (Form 4 b in Appendix F. to Rules of Supreme Court in England) even after the Judgment has been passed and entered.

Summons in Chambers.

This was a claim by specially endorsed writ made against the 1st Defendant as the administrator of the estate of Kavena Mohamed Abdul Kader Maricar, deceased and against the 2nd Defendant personally, the cause of action being moneys due on Promissory Notes. The writ was endorsed with a statement that the 1st Defendant was sued as the administrator of the estate of Kavena Mohamed Kader Maricar, deceased. Neither of the Defendants entered appearance. By an oversight Judgment was entered against both Defendants personally. The Plaintiff applied by Summons in Chambers to amend the Judgment by substituting a Judgment in the usual form set out in Form 4b in Appendix F. to the Rules of the Supreme Court in England, against the 1st Defendant as such administrator as aforesaid.

Smith for Plaintiff.

Defendants not represented.

MILLS, J.—There is ample authority for such amendment in English case-law:—

Chapman v. *Gale* (2 Levinz. p. 22: referred to in *Chetle* v. *Lees*, Carthew p. 167= E. R. 90 p. 702).

Short v. *Coffin* (5 Burrow. p. 2730), and *Ward* v. *Thomas* (1 Crompton & Meeson p. 532), (referred to in *Hancocke* v. *Prowd*, 85 English Reports at p. 482, note (10)).

In *Green* v. *Rennet* (1 T. R. p. 782=99 E. R. p. 1376) Buller, J. speaks of such amendment as being a common proceeding.

In *Gorton* v. *Gregory*, a judgment *de bonis propriis* was amended by the Exchequer Chamber, i.e. as it were, on appeal.

But the Court has a discretion whether to amend or not (*Burroughs* v. *Stevens*, 5 Taunton p. 554).

Order amending judgment.

Solicitors for the Plaintiff—*Donaldson & Burkinshaw.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

October 14, 1933.

S. V. S. MUTHURAMAN CHETTIAR AND ANOTHER

vs.

1. EE KONG GUAN
2. C. KASIVISVANATHAN CHETTIAR

[MALACCA CIVIL SUIT No. 36 of 1925]

Fraudulent breach of trust—nature and measure of relief given to cestui que trust against trustee.

Where a person in a fiduciary capacity had committed a fraudulent breach of trust of shares in a limited liability company.

Held, that the *cestui que trust* was entitled to elect whether he would take the shares themselves plus all dividends received and interest thereon with annual rests or the highest possible price which the shares ever attained while in the hands of the wrong-doer plus dividends up to that point and simple interest upon such price from that point.

Further consideration of action.

The plaintiff as representative of one S. V. S. Supramanian Chettiar deceased brought this action for a declaration that the deceased was a sub-partner with the 1st Defendant's share in a partnership known as the Leong Watt Hin Estate. This partnership was formed for the purpose of opening up and working a rubber estate in Malacca. After this partnership had been in existence for some 5 or 6 years the business was turned into a limited company and the partners in the partnership were allotted shares in the limited company in proportions corresponding to their shares in the capital of the partnership. There were no other shareholders for the first few years of the Company's existence. The Plaintiff claimed that the 2nd Defendant had been guilty of fraudulent breach of trust in respect of the sub-share belonging to the deceased and of the shares in the limited company. The action came on for trial before Mills, J. and he found in favour of the Defendants on a plea of limitation. He found that the claims were based on breach of trust but held that the case did not fall within a "trust for a specific purpose" within the meaning of Section 9 of the Limitation Ordinance. From this decision the Plaintiff appealed to the Court of Appeal (Sproule, J., Thorne, J. and Terrell, J.) which unanimously allowed the appeal.

In paragraph 5 of the Judgment of the Court of Appeal it was declared that the 2nd Defendant received as Trustee for the said S. V. S. Supramanian Chettiar deceased 1,250 shares in the Leong Watt Hin Estate Limited and that the 2nd Defendant must account to the Plaintiff for all monies received by him or his agent in respect thereof either by way of dividend or otherwise. The Court of Appeal also ordered inter alia that accounts from November 20, 1917 of all monies received or which ought to have been received by the 2nd Defendant or his agent in respect of the said 1,250 shares in the Leong Whatt Hin Estate Ltd., be rendered and the Court of Appeal also directed an enquiry as to ascertain what was the highest value which the shares in the Leong Whatt Hin Estate Ltd., reached prior to the date of the Judgment of the Court of Appeal.

In making this order the Court did not finally decide that the Plaintiff was entitled to the highest value of such shares as set out above. The decision on this matter was left over pending further argument on further consideration consequent on the result of the enquiry ordered. The enquiries and accounts were duly made and taken. Thereupon the action came on for hearing on further consideration. Each side had applied by summons to vary the Registrar's Certificate but both these applications were dismissed by consent. The substantive question for decision on the further consideration was whether or not the Plaintiff was entitled to the highest value which the said shares had reached during the period between the issue of such shares to the 2nd Defendant and the Judgment of the Court of Appeal.

The text of the Judgment of the Court of Appeal appears in a note appended to this report.

Roland Braddell (*Briggs* with him) for the Plaintiff.

E. A. Stevens (*Goho* with him) for the 2nd Defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Ad. Vult.

MILLS, J.—By an Order of the Court of Appeal dated 14th September, 1931, the further consideration of this action was adjourned, and, the Registrar's enquiries directed by that order having been completed, the action now comes on for further consideration.

Applications to vary the Registrar's certificate have been withdrawn. By consent, I